

PERS 78-3346

DDA 78-1378/30

30 October 1978

MEMORANDUM FOR: Associate Deputy Director for Operations

FROM: John F. Blake  
Deputy Director for Administration

SUBJECT: Uniform Promotion System

REFERENCE: DDO Blind Memo dtd 11 Oct 78, subject:  
Uniform Promotion System

John:

The policy not to delay the effective dates of promotions was rescinded 16 October 1978 in an action unrelated to your memorandum. A copy of the Director of Personnel's memorandum is attached. The original policy was carefully discussed with the representatives of the Directorates, including the DDO, and at the time of the decision not to delay it was a valid procedure in terms of the guidances provided to us.

In response to the comment in paragraph 5, [REDACTED] addressed the procedures for the new system; it did not address any of the procedures where it is different from any previous practices. There was no deliberate omission of information as alluded in paragraph 5. STATINTL

Insofar as the schedule of promotions is concerned, this was designed to give the Career Services the full advantage of available headroom over the fiscal year. I understand it was worked out with all the Directorates, including some minor adjustments for the offices with particular grade/assignment problems such as the Office of Communications. I also understand there were some accommodations for your schedules including the election of either of the semi-annual dates for your once-a-year exercises. I also understand you have been approved to retain Fitness Report schedules different from the rest of the Agency.

With reference to the Civil Service Reform Bill, the Agency has been exempted from most of the provisions, including the two on Senior Executive Service and the Merit Pay. While we may elect to

adopt a modified version of the "bonus" program, there will be no decision until after the rules are established by the new Office of Personnel Management. How it will impact on within-grade increases we cannot now say. If your staff is interested in the specifics of the Bill, including the application to "supervisor and manager", a detailed summary prepared by CSC is attached.

John F. Blake

John F. Blake

Atts.

As Stated

ILLEGIB

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ORIGINATOR:

Director of Personnel

STATINTL OP/P&C/RS/ [REDACTED] cmc (20 Oct 78)

ADMINISTRATIVE - INTERNAL USE ONLY

16 OCT 1978

MEMORANDUM FOR: Deputy Director for Administration  
Deputy Director for National Foreign Assessment  
Deputy Director for Operations  
Deputy Director for Science and Technology  
Chairman, Executive Career Service Board

FROM : F. W. M. Jamney  
Director of Personnel

SUBJECT : Uniform Promotion System

REFERENCE : Memo for DDCI fr D/Pers dtd 3 Jul 78 same subj.

1. The procedures for the Uniform Promotion System have been reviewed and the policy not to delay promotions because of imminent within-grade increases dates is rescinded. The effective date of a promotion for an employee in any grade may be delayed up to 90 days to take advantage of an upcoming within-grade increase. The effective date of a promotion may also be delayed when there are problems of available headroom.

2. Components preparing the personnel actions are responsible for establishing the effective date of promotion.

F. W. M. Jamney

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STATINTL

OP/P&C/RS [REDACTED] cmc (13 Oct 78)

ADMINISTRATIVE - INTERNAL USE ONLY

CIVIL SERVICE REFORM ACT OF 1978

Detailed Summary

October 13, 1978

**Note:** With some exceptions, provisions of the Act are effective 90 days after enactment, i.e., in January 1979.

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ORGANIZATIONAL STRUCTURE FOR FEDERAL PERSONNEL MANAGEMENT

OFFICE OF PERSONNEL MANAGEMENT (Title II)

Executive Level II Director (4 year term), Executive Level III Deputy Director, up to 5 Executive Level V Associate Directors.

Responsible for "positive personnel management" functions:

- Serves as the "President's arm" for Federal personnel management and labor-management relations
- Helps agencies make effective use of personnel resources to better accomplish missions and programs
- Executes, administers, and enforces civil service laws, rules, and regulations
- Delegates personnel authorities subject to standards and oversight.

Rules and regulations of OPM for civil service system:

- Subject to rule-making provisions of Administrative Procedures Act
- Proposed regulations must be posted in agencies and interested parties notified
- Regulations subject to review and invalidation by MSPB after issuance if they lead to prohibited personnel practices.

OPM can participate in MSPB proceeding or seek judicial review only if, in Director's view, MSPB erred and its decision will have substantial impact on civil service law.

MERIT SYSTEMS PROTECTION BOARD (Title II)

Executive Level III Chairman, two Executive Level IV Board Members appointed on a bipartisan basis to 7-year nonrenewable terms, removable only for cause.

Quasi-judicial functions:

- Hears and decides appeals

- Upon request of the Special Counsel, any Board member may stay a personnel action in a case involving a prohibited personnel practice for 15 days, and may grant a 30-day extension; the Board, with Special Counsel concurrence, may extend stay for any period which it considers appropriate
- Board may order corrective action as requested by Special Counsel
  - o when, after a reasonable period, agency does not take action recommended by Special Counsel to correct a prohibited personnel practice; or
  - o where there is a pattern of prohibited personnel practices and such practices involve matters not otherwise appealable to MSPB.

Merit system oversight functions:

- Conducts special studies of civil service and other merit systems, and reports findings and recommendations to President and Congress
- Reviews rules and regulations of OPM
- Makes annual report to Congress, including review of OPM activities.

Enforcement and special authorities:

- MSPB may impose disciplinary action consisting of removal, reduction in grade, debarment from Federal employment for a period not to exceed 5 years, suspension, reprimand, or a civil penalty of up to \$1,000 on employees prosecuted by Special Counsel
- May order withholding of employee's pay for failure to comply with MSPB order
- May represent itself in court, except Supreme Court
- May award back pay and attorney fees in appropriate cases
- Allows concurrent submission of MSPB budget and legislative recommendations to Congress and to President.

SPECIAL COUNSEL (Title II)

Executive Level IV Special Counsel to MSPB, term of 5 years, removable only for cause.

Investigative functions:

- Responsible for investigating allegations of
  - o prohibited personnel practices, including reprisals against whistleblowers

- o prohibited political activity
- o arbitrary or capricious withholding of information (under Freedom of Information Act)
- o activities prohibited by any other civil service law, rule, or regulation
- o involvement in prohibited discrimination
- May request MSPB to stay a personnel action in any case involving commission of a prohibited personnel practice
- Involved in processing whistleblower complaints of wrongdoing by agency officials.

Prosecutory functions:

- May bring disciplinary charges against employees before MSPB
  - o after any investigation conducted by the Special Counsel
  - o for refusal to comply with an MSPB order.

Corrective action:

- If Special Counsel finds a prohibited personnel practice which requires corrective action, reports that need along with recommendations to MSPB, agency and OPM
- May initiate corrective action before MSPB
  - o if, after a reasonable period, agency has not taken corrective action recommended by Special Counsel
  - o where the Special Counsel believes there is a pattern of prohibited personnel practices and such practices involve matters not otherwise appealable to MSPB.

FEDERAL LABOR RELATIONS AUTHORITY (Title VII)

Executive Level IV Chairman, two Executive Level V Members appointed on a bipartisan basis to staggered 5-year terms, removable only for cause.

Executive Level V General Counsel appointed to a 5-year term.

FLRA functions and authorities:

- Determines appropriate bargaining units
- Supervises elections and certifies exclusive bargaining agents
- Resolves issues relating to the granting of national consultation rights and Government-wide consultation rights
- Decides appeals from determinations of non-negotiability
- Conducts hearings and resolves complaints of unfair labor practices



- May require an agency or a labor organization to cease and desist from violations of the labor-management relations program and to take any appropriate remedial action
- May go to court to get a compliance or enforcement order, and may represent itself in court, except Supreme Court.

General Counsel functions:

- Investigates alleged violations of the labor-management relations program
- Files and prosecutes complaints of unfair labor practices before FLRA.

Federal Service Impasses Panel continues as separate entity in FLRA to resolve negotiation impasses.

CHANGES IN THE FEDERAL PERSONNEL SYSTEM

MERIT SYSTEM PRINCIPLES AND PROHIBITED PERSONNEL PRACTICES (Title I)

Merit system principles are established in law. In summary, these are:

- Recruitment to achieve a workforce from all segments of society, with selection and advancement solely on the basis of merit, after fair and open competition which assures equal opportunity
- Fair treatment for all applicants and employees with no illegal discrimination, and with proper regard for their privacy and constitutional rights
- Equal pay for work of equal value, with consideration of local and national private sector pay rates and with incentives and recognition for excellence in performance
- Employees to maintain high standards of integrity, conduct, and concern for the public interest
- Efficient and effective use of the Federal workforce
- Retention based on performance and training to improve performance
- Protection of employees against arbitrary action, personal favoritism, or coercion for partisan political purposes, and prohibit them from using office for partisan purposes
- Protection of employees against reprisal for lawful disclosures of information.

Prohibited personnel practices are established in law. In summary, these are taking, ordering, recommending, or approving a personnel action (such as an appointment, removal, suspension, performance evaluation, or any significant change in duties or responsibilities inconsistent with an employee's salary or grade level) on the basis of the following prohibited reasons:

- Illegal discrimination
- Except as authorized, soliciting or considering prohibited employment recommendations
- Coercing the political activity of any person

- Deceiving or willfully obstructing any person from competing for employment
- Influencing any person to withdraw from competition for any position for the purpose of improving or injuring the prospects of any other person for employment
- Giving unauthorized preferential treatment to any employee or applicant
- Nepotism (hiring or promoting relatives)
- Taking or failing to take a personnel action as a reprisal against a whistleblower
- Taking or failing to take a personnel action as a reprisal for the exercise of any appeal right
- Discriminating on the basis of personal conduct which does not adversely affect the performance of an employee or applicant or the performance of others, except in cases of criminal conviction for the conduct
- Taking or failing to take any other personnel action if the taking or failure to take such action violates any law, rule, or regulation implementing or directly concerning the merit system principles.

Agency heads and agency officials who are delegated authority for personnel management are responsible for preventing prohibited personnel practices and for complying with and enforcing civil service laws, rules, and regulations.

Prohibited personnel practices are not to be construed to lessen the effort to achieve equal employment opportunity through affirmative action.

GAO responsibility: GAO annual report to the President and Congress to include review of significant actions of MSPB and OPM.

#### WHISTLEBLOWER PROVISIONS (Title II)

Protected disclosures - information that an employee or applicant reasonably believes evidences:

- A violation of any law, rule, or regulation
- Mismanagement, gross waste of funds, abuse of authority, or a substantial and specific danger to public health or safety.

Unprotected disclosures: Those disclosures specifically prohibited by law and required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs.

Special Counsel role in protecting whistleblowers against reprisal:

- Investigate allegation of reprisal without revealing identity of complainant
- May petition any Board member for stay of personnel action (also applies to all other cases involving prohibited personnel practices).

Special Counsel as "ombudsman":

- Reviews the information
- Promptly transmits all disclosed information complaining of improper action by officials to appropriate agency head or to Attorney General if criminal matters appear to be involved
- May require an agency investigation and written report
- Copies of the agency report go to the Congress, the President, and the Special Counsel for transmittal to the complainant
- Must review the agency report to determine whether
  - o it contains the specific information required by this Act
  - o the findings of the agency head appear reasonable
- Maintains public list of matters referred to agencies.

#### PERFORMANCE APPRAISAL SYSTEMS (Title II)

Existing Government-wide performance evaluation system is repealed.

Agencies must establish new performance appraisal systems which:

- Provide for periodic appraisals of job performance
- Encourage employee participation in establishing performance standards
- Use appraisal results as basis for personnel actions affecting employees.

Performance appraisal systems to provide for:

- Establishing performance standards which will permit accurate evaluation of job performance on the basis of objective criteria related to the job
- Communicating to each employee the performance standards and critical elements of the employee's position no later than 10/1/81 with respect to initial appraisal periods, and thereafter at the beginning of each following appraisal period
- Evaluating each employee on such standards during the appraisal period
- Recognizing and rewarding employees whose performance so warrants
- Assisting employees in improving unacceptable performance
- Reassigning, demoting, or removing employees who continue to have unacceptable performance, but only after an opportunity to demonstrate acceptable performance.

New procedure for removal or reduction in grade based on "unacceptable performance" (i.e., failure to meet established performance standards in one or more critical elements of the job). Agency decision required within 30 days after expiration of notice period. Demotions and removals based on unacceptable performance are appealable to MSPB (see next topic).

OPM and GAO (on a selected basis) must review performance evaluation systems to assess their compliance with the aforementioned requirements.

APPEALS FROM ACTIONS BASED ON UNACCEPTABLE PERFORMANCE, PERSONAL CAUSE, AND OTHER REASONS (Title II)

Adverse actions: removal, suspension for more than 14 days, reduction in grade or pay, and furloughs for 30 days or less are appealable to MSPB. Concept of "reduction in rank" is abolished as an appealable matter.

Right to a hearing: employee is entitled to hearing on appeal to MSPB.

Burden of proof: burden of proof rests upon agency.

Standard of review

Decision of agency to be sustained only if the agency's decision:

- In the case of an action based on unacceptable performance, is supported by substantial evidence
- In any other case, is supported by a preponderance of the evidence.

Agency's decision may not be sustained if the employee or applicant:

- Shows harmful error in the application of the agency's procedures in arriving at such decision;
- Shows that the decision was based on any prohibited personnel practice; or
- Shows that the decision was not in accordance with law.

Same standards apply whether decision is handled by MSPB or an arbitrator.

Payment of employee's or applicant's attorney fees by agency may be required if employee or applicant prevails and MSPB, FLRA or the arbitrator determines that payment by the agency is warranted in the interest of justice, including any case in which the agency engaged in a prohibited personnel practice or any case in which the agency's action was clearly without merit.

Judicial review of appeal decisions in Court of Claims or U.S. court of appeals.

APPEALS THAT INCLUDE DISCRIMINATION ISSUES (Title II)

The following procedure applies to all cases involving any action that is appealable to MSPB and which include an allegation of unlawful discrimination ("mixed cases"):

- In such a matter before an agency, the agency has 120 days to resolve it. The agency decision then becomes judicially reviewable unless the employee appeals to MSPB within the time limits set by MSPB.
- MSPB decides both the issue of discrimination and the appealable action within 120 days of filing of the appeal. No EEOC participation at this step. Decision and order of MSPB represent final agency action and shall be judicially reviewable unless employee petitions EEOC to reconsider within 30 days after notice of MSPB's decision.

- EEOC has 30 days to determine whether to consider the decision; if it decides not to consider the Board's decision, the matter becomes judicially reviewable as of the date of such decision.
- If EEOC decides to consider the Board decision, it has 60 days to consider the entire record of the proceedings before MSPB; the EEOC may supplement the record by holding additional hearings or remanding case to MSPB for further hearings within the 60 days.
- If EEOC concurs with MSPB, the MSPB decision and order represent final agency action and are judicially reviewable.
- If EEOC disagrees with the MSPB decision, then the case is referred back to MSPB. In making a different decision, EEOC must determine either that
  - o the MSPB decision constitutes an incorrect interpretation of any law, rule, regulation or policy directive over which EEOC has jurisdiction; or
  - o the decision involving such provision is not supported by the evidence in the record as a whole.
- MSPB then has 30 days to consider the EEOC decision and may accept the EEOC order fully or in part, or reaffirm its initial decision and order if it determines that the EEOC order
  - o constitutes an incorrect interpretation of any civil service law, rule, regulation, or policy directive; or
  - o the decision involving such provision is not supported by the evidence in the record as a whole.
- If MSPB does not adopt the order of EEOC, the matter will be certified within 5 days to a special three-member panel, comprised of one member of EEOC, one member of MSPB, and a chairman who is from outside the Government, appointed by the President with the advice and consent of the Senate to a term of 6 years, and removable only for cause.
- The panel has 45 days to review the entire administrative record of the proceeding and decide the matter. Its decision will be then be the final agency action in the matter.

Employees may file a civil action under applicable law if --

- An agency fails to issue its decision within the required 120 days;
- MSPB fails to issue its decision within 120 days of the initial filing of the appeal with it; or
- There is no final agency action within 180 days of filing of a petition with EEOC for review of an MSPB decision.

Employees may appeal to MSPB when the agency fails to issue a decision within 120 days.

These provisions do not affect the right to trial de novo under applicable law.

#### DELEGATIONS OF PERSONNEL AUTHORITY (Title II)

OPM may delegate authority for personnel management functions, including competitive examinations, to the heads of agencies in the Executive branch and the heads of other agencies employing persons in the competitive service, subject to its standards and oversight.

Delegations of authority to conduct competitive examinations not permitted for positions whose requirements are common to agencies in the Federal Government, other than in exceptional cases involving economy and efficiency.

OPM may order corrective action when agency actions taken under delegated authority are contrary to law, regulation, or standards.

Authority to delegate does not relieve OPM Director of responsibility to assure compliance with civil service laws and regulations.

#### STAFFING PROVISIONS (Title III)

##### Miscellaneous Staffing Provisions

Permits acceptance of unpaid volunteer services by students in connection with educational programs.

Authorizes employment of interpreters for deaf employees and reading assistants for blind employees.

Provides new probationary period for first appointment to a supervisory or managerial position.

Allows retraining of employees who would otherwise be separated due to reduction in force in order to qualify for jobs in other agencies.

Allows OPM to permit agencies to decide shortage categories for the purposes of paying travel and transportation to first post of duty.

Expands coverage of early retirement provisions now applicable only to a major reduction in force, to include a major reorganization or a major transfer of function, as determined by OPM.

Repeals provisions against employment of more than 2 members of same family.



Veterans Preference and Benefits

Eliminates preference for non-disabled individuals who retired at or above the rank of major or its equivalent. Effective 10/1/80.

Additional benefits for veterans who are rated 30% disabled or more:

- New authority for noncompetitive appointments
- Preference over other preference eligibles in reduction in force.

Veterans with 30% disability or more are granted a right to notification, opportunity to respond, and review of final determination by OPM:

- When deemed ineligible for position due to physical qualifications
- When passed over on a civil service certificate by an agency in the course of filling a position
- When deemed ineligible for retention in a position due to physical disability.

OPM may delegate passover and physical qualifications determinations to agencies in all cases except those involving veterans with 30% disability or more.

Limitation on Dual Pay for Retired Members of the Uniformed Services

Combined retired pay (exclusive of disability or other benefits administered by VA) and civilian salary received by any retired member of the uniformed services may not exceed the pay for Executive Level V (currently \$47,500). Retired pay to be reduced when combined pay exceeds this limit. Applies only to those who first receive retired pay after law is enacted. Does not apply, however, to those who are employed on the date of enactment and are entitled to military retired pay, but will not receive such retired pay until they meet any applicable age requirement. Present reduction in retired pay of regular officers will continue. Grants OPM the authority, for 5 years, to make exceptions from the pay limitation for medical officers.

Notification of Vacancies in the Civil Service

OPM and examining offices must notify the U.S. Employment Service of competitive examinations administered by or under OPM. Agencies must provide OPM and USES employment information about positions in the competitive service and Senior Executive Service to be filled by candidates who are from outside the Federal service and are not on civil service registers.

#### Minority Recruitment Program

Each agency is to conduct a minority recruitment program, with OPM assistance, evaluation, and oversight, to eliminate underrepresentation of minorities within categories of civil service employment. EEOC is to make determinations of underrepresentation and establish guidelines for minority recruitment programs.

#### Temporary Limitation on Executive Branch Employment

On 9/30/79 and the last days of fiscal years 1980 and 1981, the total number of civilian employees in the Executive Branch (except Postal Service and Postal Rate Commission) is not to exceed the number of employees on 9/30/77. The President may authorize a higher number within the limits of a growth factor based on increases in the U.S. population. Contracting out is not to be increased by reason of this limitation. Exception from total employment limit: up to 60,000 employees in special employment categories for students and disadvantaged youth.

#### SENIOR EXECUTIVE SERVICE (Title IV)

Covers manager and supervisor positions now in GS-16 through Executive Level IV or equivalent (about 8000 positions). Effective 9 months after enactment. After 5 years, Congress will have a 60 day period during which it may discontinue the SES by adopting a concurrent resolution.

#### Size of SES

Based on agency program needs. OPM consults with OMB and allocates number of SES positions to agencies for 2-year period, with report to Congress. OPM may adjust allocation upward or downward during that period.

Total number of SES positions Government-wide at any given time not to exceed 105% of total number of positions authorized by OPM for the 2-year period.

Special provisions relating to total number of executive positions:

- Puts present supergrade manager positions and "Public Law 313" scientific manager positions into a common Government-wide pool
- Abolishes many special statutory allocations to individual agencies

- Sets overall limit of 10,777 on SES and GS supergrade positions combined, and 517 on nongraded, nonmanagerial scientific and professional positions outside SES engaged in research and development
- OPM to determine and publish the number of Executive Level positions outside SES as of date of enactment (which then becomes a limit on Executive Level positions); by 1/80, President to send Congress a plan for authorizing Executive Level positions.

#### Structure of SES

##### Two types of positions:

###### 1. Career-reserved --

- o based on need to ensure impartiality, or public's confidence of impartiality, of Government
- o may be filled only by career appointees
- o OPM determines initial number of total SES positions to be career reserved; must not be less than number of positions filled by competitive examination when SES is enacted (estimated about 45% of total SES strength)

###### 2. General -- may be filled by career or noncareer appointees or by limited term or limited emergency appointees.

##### Four types of appointments:

###### 1. Career -- selection by merit staffing process and approval of managerial qualifications by OPM.

###### 2. Noncareer --

- o selection without merit staffing process
- o no more than 10% of SES positions Government-wide, and no more than 25% of SES positions in an agency with exception for agencies now over that limit
- o annual allocation by OPM of percentage for each agency.

###### 3. Limited term -- nonrenewable appointment for up to 3 years to General SES position which will expire.

###### 4. Limited emergency -- nonrenewable appointment for up to 18 months to new General SES position which must be filled urgently.

- Limits on total number of limited appointments (#3 and #4 above) -- no more than 5% of SES positions Government-wide; OPM must approve use of appointment authority.

### Entry Into SES

Qualification standards: established by agency for particular position in accordance with OPM guidance.

Career appointment:

- Agency recruits and evaluates candidates using executive resource boards
- OPM evaluates managerial qualifications of candidates, using qualifications review boards with majority career membership
- One year probation for initial career appointment to SES
- Veterans preference not applicable for SES.

Noncareer, limited term, limited emergency appointments: agencies determine qualifications of appointees.

Service requirement: not more than 30% of SES positions may be filled by individuals with less than 5 years of current continuous service immediately before initial appointment to SES.

Initial conversion to SES:

- Agencies designate positions to go into SES
- Employees in designated positions have 90 days to elect to go into SES or remain in their present appointing authority, retaining present pay and benefits, but with no eligibility for promotion or transfer except to a non-SES position.
- Converted employees do not have to have their managerial qualifications approved by OPM or serve a probationary period.

### Reassignments and Transfers Within SES

Executive may be reassigned to an SES position in same agency, but career appointee only upon 15 days advance notice. No involuntary reassignment of career appointee within 120 days of appointment of new agency head or of new noncareer supervisor. Executives may elect to transfer to another agency which wishes to employ them, but may not be transferred involuntarily.

Compensation and Benefits of SES

Basic pay:

- 5 or more levels of basic pay.
  - o minimum = GS-16 pay at first step
  - o maximum = Executive Level IV pay
- President adjusts basic pay annually and publishes new levels in Federal Register and reports them to Congress
- Agency head sets basic pay of individual executives at one of the levels authorized
- Only one pay adjustment per executive per year
- If career executive's basic pay is to be reduced, must give 15 days notice.

Performance awards for career executives:

- May be awarded lump sum payment once a year for fully successful performance, up to 20% of basic pay; noncontinuing (must be earned each year)
- The maximum number of performance awards in an agency each year is equal to 50% of SES positions in the agency (if agency has 4 or more SES positions).

Ranks for career executives:

- 5% of SES executives per year may be given rank of Meritorious Executive and get one-time lump sum payment of \$10,000
- 1% may be designated Distinguished Executive and get one-time lump sum payment of \$20,000
- Career executives may receive same rank only once within 5 year period
- Agency nominates, OPM recommends, President awards ranks.

Compensation limit: basic pay plus performance awards plus rank payment may not exceed pay of Executive Level I (currently \$66,000).

Sabbaticals for career executives:

- Agency head may grant sabbaticals (employee retains salary and benefits and agency may grant travel and per diem costs) for up to

11 months during any 10 year period for study or uncompensated work experience contributing to employee's development and effectiveness

- To be eligible, career executive must have 7 years of service, 2 years in SES, not be eligible for retirement, and agree to remain in civil service 2 years after sabbatical.

Leave: No limit on leave accumulation for members of SES.

#### Performance Evaluation in SES

Agencies develop performance appraisal systems. Criteria for evaluation are based on both individual and organizational performance and take into account such things as improvement of efficiency, productivity, quality of work, reduction of paperwork, cost efficiency, timeliness of performance, meeting affirmative action goals.

Ratings are reviewed by agency performance review boards. For career executives, majority on review board must be career employees. Annual ratings, but no rating within 120 days after beginning of new Administration.

Ratings: one or more fully successful levels of performance (individual eligible for performance award), minimally satisfactory level of performance, and unsatisfactory level of performance. Less than fully successful rating is basis for removal from SES under conditions specified below.

#### Removal from SES

##### Career Executives:

- If removed from SES during probationary period for inadequate performance, entitled to be placed in non-SES position (if not originally appointed to SES from outside Government)
- After probationary period, must be reassigned or transferred to another position within SES or removed from SES for 1 unsatisfactory rating; must be removed from SES for 2 unsatisfactory ratings in 5 years or for 2 less than fully successful ratings (i.e., minimally satisfactory or unsatisfactory) in 3 years
- If removed for poor performance after probationary period, may request informal public hearing before MSPB; is entitled to placement in non-SES position at GS-15 or above, or may retire if has 25 years of service or is age 50 with 20 years of service
- No removal for poor performance during 120 days after appointment of new agency head or of new noncareer supervisor except where removal is required by rating given prior to appointment

- Disciplinary removal procedures and rights in SES are similar to those for competitive service employee (30 day notice, right to reply, may appeal to MSPB, etc.)

Noncareer and limited executives: removal at pleasure of agency head; no appeal rights.

#### MERIT PAY AND CASH AWARDS (Title V)

##### Merit Pay

Coverage: managers and supervisors in grades GS-13 through GS-15.

Major features:

- Merit pay increases awarded in recognition of quality performance
- Within-grade steps eliminated for this group -- can be paid any rate between the minimum and maximum rates of the grade
- At least 50% of comparability pay raise must be granted automatically; OPM may grant more
- Source of funding for merit pay pool: remaining comparability pay funds plus money that would have been spent on within-grade and quality step increases for managers and supervisors in GS-13 through GS-15
- All managers to review and evaluate performance of each covered employee annually and determine what size merit increase is warranted, if any
- Grants merit pay increases to managers taking into account both their organizational accomplishments and individual performance, based on such factors as
  - o improvements in efficiency, productivity, and quality of work or service, including any significant reductions in paperwork
  - o cost efficiency
  - o timeliness of performance
  - o other indications of the effectiveness, productivity, and quality of performance of the employees for whom the manager is responsible.

Conversion: No one to suffer salary loss.

Effective date: No later than October 1, 1981; earlier phasing in permitted.

#### Cash Awards

Agency head and President each may give cash awards for suggestions, inventions, superior accomplishments, improving Government operations, reducing paperwork, special acts or services in the public interest. Limit is \$10,000; OPM may approve awards up to \$25,000. Same accomplishment may win both agency and Presidential award.

#### RESEARCH AND DEMONSTRATION AUTHORITY (Title VI)

OPM to conduct and support public management research.

OPM also to carry out demonstration projects that test new approaches to personnel management:

- No more than 10 projects active at any one time
- Size limited to 5,000 employees per project; duration limited to 5 years
- May waive personnel laws to conduct demonstration projects, except cannot
  - o waive laws, rules, or regulations relating to political activities or equal employment opportunity
  - o affect leave, insurance, or annuity provisions
  - o be inconsistent with merit system principles or violate prohibited personnel practices
- OPM to develop, publish, and hold public hearing on project plan
- OPM to notify employees and Congress of the proposed project at least 6 months prior to implementation
- OPM to report to Congress 3 months prior to implementation
- Requires consultation or negotiation with unions, or where no negotiated agreement exists, consultation with employees.

#### STATE AND LOCAL PERSONNEL STANDARDS, INTERGOVERNMENTAL PERSONNEL ACT MOBILITY PROGRAM (Title VI)

Authorizes Federal agencies to require State and local governments to have merit personnel systems for positions engaged in administration of Federal assistance programs.



Abolishes a variety of statutory personnel requirements established as a condition of the receipt of Federal grants-in-aid by State and local governments.

Extends mobility program to include additional types of organizations and individuals, and adds an obligated service requirement.

Authorizes Federal agencies to reimburse mobility assignees for certain miscellaneous relocation expenses.

#### LABOR-MANAGEMENT RELATIONS (Title VII)

##### Preamble (Policy)

Labor organizations, and statutory protections of the right to organize and bargain collectively in the Federal civil service are found to be in the public interest. Recognizes requirements of Federal sector, and need for efficient, effective Government operations.

##### Supervisors

Basic definition of supervisors requires "consistent" exercise of independent judgment. Supervisors excluded from employee bargaining units, and may not participate in management or representation of labor organizations.

Firefighters and nurses must meet tougher, "preponderance of time" test to qualify as supervisors.

##### Definitions

"Labor organization" excludes organization which participates in strike against U.S. Government, or imposes duty or obligation to conduct, assist, or participate in such strike.

"Conditions of employment" which may be negotiated exclude matters relating to political activities, position classification, and those specifically prescribed by law - e.g., pay and benefits. However, regulations also limit scope of bargaining.

"Grievance" defined broadly to include any matter relating to employment with an agency and any claimed violation, misinterpretation or misapplication of any law, rule, or regulation affecting conditions of employment. (See also Grievance Arbitration below.)

### Scope of Bargaining

Includes personnel policies, practices and matters affecting working conditions --limited by laws and excluding Government-wide regulations, as well as agency regulations for which "compelling need" exists.

Agencies which issue Government-wide regulations must consult with unions.

Two categories of management rights:

- Bargaining permitted but not required on numbers, types and grades of employees or positions assigned to a unit, project, or tour of duty; and on technology, methods, and means of performing work
- Bargaining prohibited on mission, budget, organization, number of employees, and internal security practices of agency. Also prohibited on management's right to hire, assign, direct, layoff, and retain employees as well as suspend, remove, reduce in grade or pay, or take other disciplinary action; to assign work, make determinations with respect to contracting out, and determine personnel by which operations shall be conducted; to make appointments to fill positions; and to take necessary actions in emergency.

Special expedited procedure for negotiability disputes which do not involve allegation of "compelling need", including 30-day period for agency decision. FLRA to decide whether to hold hearing in compelling need case.

### Representation Rights

Exclusive union is entitled to be present at "formal discussions" between management and employee(s) in bargaining unit concerning any grievance or any personnel policy or practices or other general condition of employment.

Employee has right to union representation at any examination of the employee in connection with an investigation if employee believes discipline could result. Agencies required to notify employees of this right annually.

Provides 30-day period for approval of negotiated agreements by agency head (or designee) for conformity with law and appropriate regulations.

### Grievance Arbitration

Scope of grievance arbitration is defined broadly, covering any matter within authority of agency but excluding position classification (but not reduction in grade or pay), political activities, retirement, life